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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Honorable Lewis F. Payne, Jr.
House of Representatives
1119 Longworth House Office Building
Washington, DC 20515

93-253

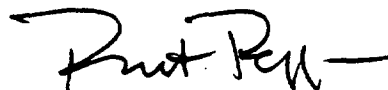
Dear Congressman Payne:

This in reply to your letter of July 27, 1993, on behalf of your constituent Derwood S. Chase, Jr. Mr. Chase is concerned about the impact of recent legislation on a variety of radio services for which applications have already been accepted for filing. Your letter was referred to me because the Office of Plans and Policy is responsible for implementing the competitive bidding provisions of the Budget Act.

On August 10, 1993, President Clinton signed the Omnibus Budget Reconciliation Act of 1993 (Budget Act). Under the Budget Act, the Commission must subject all initial mutually exclusive applications for subscriber-based radio services to a system of competitive bidding rather than lotteries. In addition, the Budget Act, signed August 10, 1993, provided the Commission with 210 days from its date of enactment, or March 8, 1994, to issue final rules concerning competitive bidding. Accordingly, the Commission recently initiated a rule making proceeding to implement the competitive bidding provisions of the Budget Act. Notice of Proposed Rule Making (Notice), ~~PP Docket~~ **93-253** (released October 12, 1993). In the Notice, the Commission, pursuant to the legislative criteria, proposed to subject auction essentially all mutually exclusive applications in subscriber-based services. With this in mind, the Commission proposed to subject to auction personal communications services, cellular radio unserved areas, the interactive video and data service (IVDS), and the 220-222 MHz land mobile service, among other services. The Budget Act, however, permits the Commission to either conduct a lottery or an auction for mutually exclusive applications received prior to July 26, 1993. Therefore, for example, the Commission conducted a lottery on September 15, 1993, of the first nine IVDS markets because the subject applications were received prior to July 26, 1993. With respect to applications in other services subject to the grandfather clause, the Commission asked the public for comment in the Notice concerning whether to conduct an auctions or lotteries.

The public, including your constituents, are invited to submit comments to this proceeding by November 10, 1993, and reply comments by November 24, 1993. I can assure you that the Commission will give full consideration to all comments filed in the competitive bidding rule making proceeding.

Sincerely,



Robert Pepper
Chief
Office of Plans and Policy

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House of Representatives
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WAYS AND MEANS COMMITTEE

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CHARLOTTESVILLE DISTRICT OFFICE

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SELECT REVENUE MEASURES

Congress of the United States
House of Representatives
Washington, DC 20515-4605

August 20, 1993

Federal Communications Commission
Office of Legislative Affairs
1919 M Street, NW
Washington, DC 20554

Dear Mr. Director:

This is in regard to the enclosed letter.

I would appreciate your input into this matter. Any information you can provide will be of great assistance.

I look forward to hearing from you.

Sincerely,
L. F. PayneLFPJr:th
Enclosure

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July 14, 1993

The Honorable L. F. Payne, Jr.
 2308 Rayburn House Office Building
 Washington, DC 20515
 FAX 202/226-1147

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 ENVELOPE NAME TH
 SUBJECT CODE
 AUTHOR
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 LFP

Re: FCC Auction Proposal

Dear Congressman Payne:

As a person engaged in operating a small business, I am in immediate need of your assistance on the critical matter of Congressional authorization for the FCC to auction spectrum. This auction authority will soon be reviewed in the House-Senate budget reconciliation conference. The legislation would apply auction procedures to applications already on file at the FCC--some of which have been pending for years!

In October of 1992, the FCC held a lottery to select 3600 licenses for its 220-232 MHz authorizations. Since January, 1993 it has been issuing licenses to the winners selected in October. So far it has issued licenses to only one quarter of the lottery winners and the rest may never get licenses because of this legislation.

I, like many of the tentative selectees, have invested time and money in an effort to develop the facilities. Some have placed orders for equipment. If the spectrum auctioning proposal is enacted as drafted these tentative selectees will lose the investment they have made. Even those who have received their licenses will be at risk because the entire licensing scheme will surely be subjected to litigation. These circumstances warrant a reconsideration of retroactive application of the spectrum auctioning proposal.

Clearly, the rules are being changed very late in the game. I believe this unfair result is inadvertent, but under the House and Senate budget bills, the long ago announced procedure for selecting licenses in the 220 MHz radio service will be abandoned in favor of an auction scheme. While the proposal to auction spectrum may generally be a good idea, there has been no public hearing, and no opportunity to accurately weigh the budget implications of auctioning 220 MHz spectrum. There has been no airing of the concerns of the 220 MHz tentative selectees.

The Chairman of the FCC has contacted the Congressional leadership to express concern with the broad sweep of the proposed legislation. There were over 65,000 220 MHz applications filed--it is estimated that it would cost \$50 to return each application,

The Honorable L. F. Payne, Jr.
July 14, 1993
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plus the \$35 filing fee originally paid by the applicant. There is no expectation that auctioning the 220 MHz spectrum will even begin to cover the amounts expended in returning application, let alone that it will realize gain for the Treasury.

These results can be avoided. Senators Daniel K. Inouye, a member, and Ernest F. Hollings, the Chairman of the Senate Commerce Committee and Congressman Edward Markey, a member, and John Dingell, the Chairman on the House Energy and Commerce Committee are considering steps to remedy the discriminatory effect of the auction provisions. They propose to resolve the matter in conference. I ask that you immediately contact them and urge the conferees to restore the FCC's authority to complete the issuance of 220 MHz licenses to the tentative selectees.

Cordially,


Donald S. Chase, Jr., CIC
President

DSC/swk

* Similarly the FCC should be permitted to complete all pending lotteries which are already in process i.e. RSA Cellular re-lotteries, EV/DS (Infrastructure Video) and just adopt a experiment with the auction alternative with newly available spectrum. *